



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0735]

RIN 1625-AA00

Safety Zone; Nahant Bay, Marblehead, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Captain of the Port (COTP) Boston Zone within a 2,500-yard radius around a position approximately 6nm Northeast of Nahant Bay, MA, for a Department of Defense (DOD) Training Exercise. The safety zone is needed to protect Navy personnel, support vessels, and the maritime public from the hazards associated with this training exercise. Entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement is prohibited unless authorized by the Coast Guard Sector Boston COTP or the COTP's designated representative.

DATES: This rule is effective on August 24, 2016 from 7:00 p.m. through 10:00 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0735 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email, Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOD	Department of Defense
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Data of 1983
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because publishing a NPRM would be impracticable. DOD Training Exercise will take place on August 24, 2016. The DOD Exercise will consist of High-altitude military parachuting freefall insertion approximately 6nm Northeast of Nahant, MA, in position 42° 27.000’ N, 070° 50.000’ W. This exercise will present safety hazards and risks to Navy personnel, support vessels, and the maritime public during the exercise. It would be impracticable to delay promulgating this rule, as it would not be possible to conduct notice and comment rulemaking before the date of

the exercise. For this reason, the Coast Guard finds it impracticable to delay this regulation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the same reasons specified above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that the potential hazards associated with this DOD Training Exercise create a serious safety concern for anyone transiting within a 2,500-yard radius of position 42° 27.000' N, 070° 50.000' W. This rule is needed to protect Navy personnel, vessels, and the normal marine traffic in the navigable waters within the safety zone while this exercise is being conducted.

IV. Discussion of Rule

This rule establishes a safety zone from 7:00 p.m. until 10:00 p.m. on August 24, 2016. The safety zone will cover all navigable waters within a 2,500-yard radius of position 42° 27.000' N, 070° 50.000' W. The duration of the zone is intended to protect Navy personnel, vessels, and normal marine traffic in these navigable waters during the DOD training exercise. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. The implementation of this temporary safety zone is necessary for the protection of all waterway users. The size of the zone is the minimum necessary to provide adequate protection for the waterway users, adjoining areas, and the public. Vessel traffic will be able to safely transit around this safety zone. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety

zone that will prohibit entry within 2,500 yards of position 42° 27.000' N, 070° 50.000' W during the DOD training exercise. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment Rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0735 to read as follows:

§ 165.T01-0735 Safety Zone; DOD Training Exercise, Nahant Bay, Marblehead, MA.

(a) Location. The following area is a safety zone: All navigable waters within 2,500-yards of 42° 27.000' N, 070° 50.000' W while the DOD Training Exercise is underway.

(b) Regulations. While this security zone is being enforced, the following regulations, along with those contained in § 165.33, apply:

(1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a COTP designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM channel 16 or by phone at (617)223-5757 (Sector Boston Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or a COTP designated representative.

(c) Enforcement period. This section will be enforced from 7:00 p.m. until 10:00 p.m. on August 24, 2016.

(d) Definitions. As used in this section, designated representative means is any Coast Guard commissioned, warrant, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast vessel, a Coast Guard Auxiliary vessel, state or local law enforcement, or a location on shore.

(e) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 19, 2016.

C. C. Gelzer,
Captain, U.S. Coast Guard,
Captain of the Port Boston.

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